

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

CRYSTAL HOWERY,

Appellant,

v.

THE BOEING COMPANY,

Respondent.

No. 16-35109

RESPONDENT'S RESPONSE  
TO APPELLANT'S MOTION  
TO SEAL ACCOMPANYING  
MOTION AND AFFIDAVIT

On May 19, 2016, Appellant Crystal Howery filed a Motion to Seal Accompanying Motion and Affidavit. Dkt. 13. The same day, the Court denied Howery's Motion to Seal and unlocked only her Motion to Seal. Dkt. 14. Pursuant to the Court's practices, Howery's accompanying Motion to Proceed *In Forma Pauperis* and Affidavit remain locked until the Court has ruled on the accompanying Motion. On May 24, 2016, the Court vacating its prior Order Denying the Motion to Seal. Dkt. 17.

Howery attached a certificate of service to her Motion to Seal, stating that she sent a copy of the Motion to Seal Accompanying Motion and Affidavit to Respondent The Boeing Company's counsel via U.S. mail.

Interim Federal Rule of Appellate Procedure 27-13(c) states:

Because documents submitted under seal will not be viewable to the parties via CM/ECF noticing, any notice or motion submitted under seal and any document associated with such notice or motion shall be served on opposing counsel in paper form or, by mutual agreement, via email.

Interim Fed. R. App. P. 27-13(c). On May 19, 2016, the same day Howery filed her Motion to Seal, Boeing's counsel emailed her, reminding her of her obligation to serve a copy of the documents she filed under seal and requesting an email copy. *See* email attached as Appendix A. To date, Boeing's counsel has not received a copy of Howery's Motion to Seal – nor the accompanying Motion and Affidavit – by email or by U.S. mail.

Boeing is unable to ascertain whether it needs to respond to Howery's sealed Motion to Proceed *in Forma Pauperis* when it has not been served with a copy in violation of applicable court rules. Respondent respectfully requests that the Court: (1) order Howery to promptly email a copy of her sealed documents to its counsel; (2) unseal the motion and its accompanying documents and grant Boeing additional time to respond; or (3) deny Howery's motion to proceed *in forma pauperis* for failing to comply with the rules.

DATED this 3<sup>RD</sup> day of June, 2016.

Davis Wright Tremaine LLP  
Attorneys for Defendant The Boeing  
Company

By /s/ Sheehan Sullivan Weiss

/s/ Fred B. Burnside

/s/ Boris Gaviria

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**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on June 3, 2016.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

  
Amanda McFadden

## **APPENDIX A**

**From:** [Gaviria, Boris](#)  
**To:** [acluplaintiff@hotmail.com](mailto:acluplaintiff@hotmail.com)  
**Cc:** [Sullivan Weiss, Sheehan](#); [Gaviria, Boris](#)  
**Bcc:** [McFadden, Amanda](#)  
**Subject:** Howery v. Boeing: Service of Motion Filed Under Seal 5/19/16  
**Date:** Thursday, May 19, 2016 11:00:58 AM

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Ms. Howery,

We received notice from the Court of Appeals that you filed a motion under seal. We cannot access the document in the online document system as a result.

According to Interim Federal Rule of Appellate Procedure 27-13(c), you are required to provide us with a copy of what you filed under seal via U.S. mail or email:

“Because documents submitted under seal will not be viewable to the parties via CM/ECF noticing, any notice or motion submitted under seal and any document associated with such notice or motion shall be served on opposing counsel in paper form or, by mutual agreement, via email.”

Please send us a copy of the sealed motion and any supporting documents and exhibits right away (via email or mail), or we will raise the lack of compliance with the Court.

Boris

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